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MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: Abdelali Elouaradia
Director, Office IV
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of the 2014-2016
Antidumping Duty Administrative Review of Certain Steel Nails
from the Sultanate of Oman

I. SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty (AD) order on certain steel nails (nails) from the Sultanate of Oman (Oman), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). The period of review (POR) is December 29, 2014, through June 30, 2016. The administrative review covers two mandatory respondents, Oman Fasteners LLC (Oman Fasteners) and Overseas International Steel Industry LLC (OISI). We preliminarily determine that Oman Fasteners and OISI made sales of subject merchandise at prices below normal value (NV) during the POR.

II. BACKGROUND

On July 13, 2015, the Department published in the *Federal Register* an AD order on nails from Oman.¹ On July 5, 2016, the Department published in the *Federal Register* a notice of opportunity to request an administrative review of the AD order on nails from Oman.² On July 27, 2016, the Department received a request from Oman Fasteners to conduct an administrative

¹ See *Certain Steel Nails from the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, and the Socialist Republic of Vietnam: Antidumping Duty Orders*, 80 FR 39994 (July 13, 2015).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 81 FR 43584 (July 5, 2016).

review of its exports.³ On July 28, 2016, the Department received a request from OISI to conduct an administrative review of its exports.⁴ On August 1, 2016, the Department received a request from Mid Continent Steel & Wire, Inc. (the petitioner) for the Department to conduct an administrative review of 15 companies,⁵ including Oman Fasteners and OISI.⁶

On September 12, 2016, based on timely requests for administrative reviews, the Department initiated an AD administrative review of the 15 companies.⁷ In the *Initiation Notice*, the Department indicated that, in the event that we would limit the respondents selected for individual examination in accordance with section 777A(c)(2) of the Act, we would select mandatory respondents based on U.S. Customers and Border Protection (CBP) entry data.⁸

On October 19, 2016,⁹ the Department placed on the record CBP data for U.S. imports classified under the Harmonized Tariff Schedule of the United States (HTSUS) items identified in the scope of the AD duty order on nails from Oman.¹⁰ At that time, the Department invited interested parties to submit comments regarding the CBP data for use in respondent selection.¹¹

³ See Letter from Oman Fasteners to the Department, regarding, “Certain Steel Nails from Oman; First Review; Oman Fasteners’ Request for Review,” dated July 27, 2016.

⁴ See Letter from OISI to the Department, regarding, “Certain Steel Nails from the Sultanate of Oman 1st Administrative Review: Request for Administrative Review,” dated July 28, 2016.

⁵ See Letter from Petitioner to the Department, regarding, “Certain Steel Nails from Oman: Request for Administrative Reviews,” dated August 1, 2016.

⁶ The following producers or exporters of subject merchandise were listed: Astrotech Steels Private Ltd, Consolidated Shipping services LLC, Damco India Private Ltd., Flyjac Logistics Private Ltd., International Maritime & Aviation LLC, Liladhar Pasoo India Logistics Private Ltd., Ivk Manuport Logistics LLC, Oman Fasteners LLC, Overseas Distribution Services Inc., Overseas International Steel Industry, LLC, Raajratna Metal Industries Ltd., Shanxi Tianli Industries Co. Ltd., Swift Freight India Private Ltd., United Building Material Factory, Uniworld Logistics Pvt Ltd.

⁷ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 62720 (September 12, 2016) (*Initiation Notice*).

⁸ See *Initiation Notice*, 81 FR at 62720.

⁹ See Memorandum to the File from Thomas Martin, Office IV, AD/CVD Operations, “Antidumping Duty Administrative Review of Certain Steel Nails from Oman: Second Release of Customs and Border Protection Data” (October 19, 2016) (“Second CBP Data Release”).

¹⁰ The Department released CBP data and solicited comments thereon on September 22, 2016, but the search parameters of its data query contained an inadvertent error that affected the CBP entry data that we obtained. See Memorandum to the File from Drew Jackson, Office 4, AD/CVD Operations, “Antidumping Duty Administrative Review of Certain Steel Nails from Oman: Release of Customs and Border Protection Data,” (September 22, 2016). Interested parties filed comments noting that the CBP entry data appeared incomplete. See Letter from OISI to the Department, regarding, “Re: Certain Steel Nails from the Sultanate of Oman: Comments on CBP Data and Respondent Selection,” dated September 29, 2016; Letter from Oman Fasteners to the Department, regarding, “Re: Certain Steel Nails from Oman; 1st Administrative Review Comments on CBP Data for Purposes of Respondent Selection,” dated September 28, 2016. For this reason, we performed a second CBP data query with corrected search parameters and released the corrected CBP entry data on October 19, 2016.

¹¹ See Second CBP Data Release.

The Department received two comments from interested parties regarding respondent selection: one from the petitioner,¹² and one from Oman Fasteners.¹³

On November 9, 2016, after considering the large number of potential producers/exporters involved in this administrative review, and the resources available to the Department, we determined that it was not practicable to examine all exporters/producers of subject merchandise for which a review was requested.¹⁴ As a result, pursuant to section 777A(c)(2)(B) of the Act, we determined that we could reasonably individually examine only the two largest producers/exporters of nails from Oman by U.S. entry volume during the POR (*i.e.*, Oman Fasteners and OISI).¹⁵ Accordingly, we issued the AD questionnaire to Oman Fasteners and OISI, the two mandatory respondents.¹⁶ On December 12, 2016, the petitioner timely withdrew its request for administrative reviews pursuant to 19 CFR 351.213(d)(1) of all the producers and exporters except for Oman Fasteners, OISI, and Overseas Distribution Services Inc. (ODS).¹⁷

From February 2017 to June 2017, the Department issued supplemental questionnaires to Oman Fasteners and OISI. The Department received timely responses from Oman Fasteners from March 2017 to June 2017, but received no responses to the supplemental questionnaires from OISI. On March 23, 2017, the Department extended the preliminary results in this review to no later than July 31, 2017.¹⁸

III. SCOPE OF THE ORDER

The merchandise covered by this order is certain steel nails having a nominal shaft length not exceeding 12 inches.¹⁹ Certain steel nails include, but are not limited to, nails made from round wire and nails that are cut from flat-rolled steel. Certain steel nails may be of one piece construction or constructed of two or more pieces. Certain steel nails may be produced from any type of steel, and may have any type of surface finish, head type, shank, point type and shaft diameter. Finishes include, but are not limited to, coating in vinyl, zinc (galvanized, including but not limited to electroplating or hot dipping one or more times), phosphate, cement, and paint. Certain steel nails may have one or more surface finishes. Head styles include, but are not limited to, flat, projection, cupped, oval, brad, headless, double, countersunk, and sinker. Shank

¹² See Letter from Petitioner to the Department, regarding, “Certain Steel Nails from Oman: Comments on Respondent Selection Based on Revised CBP Data,” dated October 26, 2016 (“Petitioner’s Comment on CBP Data”).

¹³ See Letter from Oman Fasteners to the Department, regarding, “Certain Steel Nails from Oman; 1st Administrative Review Comments on Second CBP Data Release for Purposes of Respondent Selection,” dated October 26, 2016 (“Oman Fasteners’ Comments on CBP Data”).

¹⁴ See Memorandum entitled, “Respondent Selection in the first Antidumping Duty Administrative Review of Certain Steel Nails from Oman,” dated November 9, 2016 (Respondent Selection Memorandum).

¹⁵ See Respondent Selection Memorandum.

¹⁶ See Department Letter, “Administrative Review of Certain Steel Nails from Oman: Antidumping Duty Questionnaire,” dated November 9, 2016.

¹⁷ See Letter from Petitioner, “Certain Steel Nails from Oman: Withdrawal of Request for Administrative Review,” dated December 12, 2016.

¹⁸ See Memorandum, “Certain Steel Nails from the Sultanate of Oman: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated March 23, 2017.

¹⁹ The shaft length of certain steel nails with flat heads or parallel shoulders under the head shall be measured from under the head or shoulder to the tip of the point. The shaft length of all other certain steel nails shall be measured overall.

styles include, but are not limited to, smooth, barbed, screw threaded, ring shank and fluted. Screw-threaded nails subject to this proceeding are driven using direct force and not by turning the nail using a tool that engages with the head. Point styles include, but are not limited to, diamond, needle, chisel and blunt or no point. Certain steel nails may be sold in bulk, or they may be collated in any manner using any material.

Excluded from the scope of the order are nails packaged in combination with one or more non-subject articles, if the total number of nails of all types, in aggregate regardless of size, is less than 25. If packaged in combination with one or more non-subject articles, nails remain subject merchandise if the total number of nails of all types, in aggregate regardless of size, is equal to or greater than 25, unless otherwise excluded based on the other exclusions below.

Also excluded from the scope are nails with a nominal shaft length of one inch or less that are (a) a component of an unassembled article, (b) the total number of nails is sixty (60) or less, and (c) the imported unassembled article falls into one of the following eight groupings: 1) builders' joinery and carpentry of wood that are classifiable as windows, French-windows and their frames; 2) builders' joinery and carpentry of wood that are classifiable as doors and their frames and thresholds; 3) swivel seats with variable height adjustment; 4) seats that are convertible into beds (with the exception of those classifiable as garden seats or camping equipment); 5) seats of cane, osier, bamboo or similar materials; 6) other seats with wooden frames (with the exception of seats of a kind used for aircraft or motor vehicles); 7) furniture (other than seats) of wood (with the exception of i) medical, surgical, dental or veterinary furniture; and ii) barbers' chairs and similar chairs, having rotating as well as both reclining and elevating movements); or 8) furniture (other than seats) of materials other than wood, metal, or plastics (*e.g.*, furniture of cane, osier, bamboo or similar materials). The aforementioned imported unassembled articles are currently classified under the following HTSUS subheadings: 4418.10, 4418.20, 9401.30, 9401.40, 9401.51, 9401.59, 9401.61, 9401.69, 9403.30, 9403.40, 9403.50, 9403.60, 9403.81 or 9403.89.

Also excluded from the scope of the order are nails that meet the specifications of Type I, Style 20 nails as identified in Tables 29 through 33 of ASTM Standard F1667 (2013 revision). Also excluded from the scope of the order are nails suitable for use in powder-actuated hand tools, whether or not threaded, which are currently classified under HTSUS subheadings 7317.00.20.00 and 7317.00.30.00.

Also excluded from the scope of the order are nails having a case hardness greater than or equal to 50 on the Rockwell Hardness C scale (HRC), a carbon content greater than or equal to 0.5 percent, a round head, a secondary reduced-diameter raised head section, a centered shank, and a smooth symmetrical point, suitable for use in gas-actuated hand tools.

Also excluded from the scope of the order are corrugated nails. A corrugated nail is made up of a small strip of corrugated steel with sharp points on one side.

Also excluded from the scope of the order are thumb tacks, which are currently classified under HTSUS subheading 7317.00.10.00.

Nails subject to the order are currently classified under HTSUS subheadings 7317.00.55.02, 7317.00.55.03, 7317.00.55.05, 7317.00.55.07, 7317.00.55.08, 7317.00.55.11, 7317.00.55.18, 7317.00.55.19, 7317.00.55.20, 7317.00.55.30, 7317.00.55.40, 7317.00.55.50, 7317.00.55.60, 7317.00.55.70, 7317.00.55.80, 7317.00.55.90, 7317.00.65.30, 7317.00.65.60 and 7317.00.75.00. Nails subject to the order also may be classified under HTSUS subheadings 7907.00.60.00, 8206.00.00.00 or other HTSUS subheadings.

While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

IV. AFFILIATION

The petitioner alleges that Oman Fasteners is affiliated with its primary U.S. customer through a closer supplier relationship, and contends that the Department should conduct the antidumping analysis for Oman Fasteners on a constructed export price basis. According to the petitioner, a close supplier relationship exists between Oman Fasteners and its customer such that the latter can control Oman Fasteners' production, pricing, and/or cost. The Department examined the relationship between Oman Fasteners and this customer in the underlying investigation and found no affiliation between Oman Fasteners and its customer.²⁰ This determination was sustained by the Court of International Trade (CIT).²¹ For the preliminary results, the Department finds that the facts have not changed between the investigation and this administrative review in a manner that would give the Department reason to change its determination of lack of affiliation in the *Final Determination*. Due to the proprietary nature of this issue, *see* Affiliation Memorandum for a complete discussion of this issue.²²

As discussed under "Use of Facts Otherwise Available and Adverse Inferences," OISI reported that it was affiliated with ODS in its initial questionnaire response, and that the two had overlapping ownership and intertwined operations. However, OISI failed to respond to the Department's supplemental questionnaires regarding the relationship between the two companies. Accordingly, for the reasons discussed in that section, we have preliminarily determined, as facts available with an adverse inference, that OISI and ODS are affiliated, pursuant to 19 CFR 351.102(b)(3). Furthermore, for the reasons discussed in that section, we have preliminarily determined to collapse the two companies into a single entity, pursuant to 19 CFR 351.401(f).

V. USE OF FACTS OTHERWISE AVAILABLE AND ADVERSE INFERENCES

Section 776(a) of the Act provides that the Department shall, subject to section 782(d) of the Act, use the "facts otherwise available" if: (1) necessary information is not on the record; or (2) an interested party or any other person: (A) withholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by

²⁰ See *Certain Steel Nails From the Sultanate of Oman: Final Determination of Sales at Less Than Fair Value*, 80 FR 28972 (May 20, 2015), and accompanying IDM, at Comment 2, (*Final Determination*).

²¹ See *Mid Continent Steel & Wire, Inc. v. United States*, 203 F. Supp. 3d 1295 (CIT 2017).

²² For further discussion, *see* the Department's Memorandum re: Certain Steel Nails from the Sultanate of Oman: Affiliation Status of Oman Fasteners, LLC and Its U.S. Customer, dated July 31, 2017 (Affiliation Memo).

the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information.

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the TPEA, the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.²³ Further, section 776(b)(2) of the Act states that an adverse inference may include reliance on information derived from the petition, the final determination from the less than fair value investigation, a previous administrative review, or other information placed on the record.²⁴

Section 776(c) of the Act provides that, in general, when the Department relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.²⁵ Secondary information is defined as information derived from the petition that gave rise to the investigation, the final determination concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.²⁶

Under section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins. The TPEA also makes clear that when selecting an adverse facts available (AFA) margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.²⁷

Application of AFA to OISI

In response to section A of the original questionnaire, OISI reported that the same individual owned a majority of OISI and a large minority percentage of its affiliate in the United Arab Emirates (UAE), ODS.²⁸ Further, OISI reported that it operated exclusively as a toller for ODS.²⁹ Although OISI produced nails in Oman, ODS retained ownership of the raw materials

²³ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

²⁴ See also 19 CFR 351.308(c).

²⁵ See also 19 CFR 351.308(d).

²⁶ See SAA at 870 (1994).

²⁷ See section 776(d)(1)-(2) of the Act; See also the Trade Preferences Extension Act of 2015 (TPEA), section 502(3).

²⁸ See Letter from OISI to the Department, Regarding “Steel Nails from the Sultanate of Oman: Response to Section A Questionnaire,” dated December 12, 2016 (OISI Section A Response) at 10 and Exhibit A-3.

²⁹ See OISI Section A Response at 9, 13-14, 24.

and finished products.³⁰ With the exception of shipping logistics, all top level OISI management and selling activity was located at ODS' headquarters.³¹ OISI's initial response to section A of the original questionnaire was deficient in several aspects, and on February 10, 2017, the Department issued a supplemental questionnaire regarding OISI's response to section A of the initial questionnaire.³² In the supplemental questionnaire, the Department requested further information regarding OISI's affiliation with ODS, the corporate and management structure of OISI and ODS,³³ and the intertwined operations between OISI and ODS, to enable the Department to determine whether OISI and ODS were affiliated under 19 CFR 351.102(b)(3) and should be collapsed under 19 CFR 351.401(f).³⁴

Furthermore, OISI's initial response to section C of the original questionnaire was deficient in several aspects, such as regarding the correct date of sale;³⁵ the reconciliation of OISI's general ledger account balances to audited financial statements,³⁶ an explanation of how OISI can track nails it produces and those produced by ODS in its inventory;³⁷ an explanation of how OISI calculates the nominal weight of its products for reporting sales quantity on a kilogram basis;³⁸ and information regarding OISI's reported payment dates, freight expenses, indirect selling expenses, and packing expenses.³⁹ Accordingly, the February 10, 2017, supplemental questionnaire also requested that OISI correct this information, which is necessary to determine whether OISI accounted for all of its U.S. market sales relating to the subject merchandise and to otherwise ensure the accuracy of the sales data provided.

On February 22, 2017, OISI submitted a request for an extension to file the company's section A and C supplemental questionnaire response, stating that "key personnel required to prepare the questionnaire have been out of office and not available to assist with its preparation."⁴⁰ On February 22, 2017, for those reasons stated in OISI's February 22, 2017, request, the Department granted an extension for OISI to submit its section A and C supplemental questionnaire response, in part.⁴¹ On March 3, 2017, the Department granted another extension for OISI to submit its section A and C supplemental questionnaire response, because OISI was not served with the Department's previous letter granting an extension.⁴² The March 3, 2017 extension set

³⁰ *Id.*

³¹ See OISI Section A Response at 8-10, 15.

³² See Letter from the Department to OISI, Regarding "Administrative Review of the Antidumping Duty Order on Nails from the Oman: Supplemental Section A and C Questionnaire," dated February 13, 2017 (OISI Supplemental A and C).

³³ *Id.* at 3-4.

³⁴ *Id.* at 4-5.

³⁵ *Id.* at 5.

³⁶ *Id.* at 5-6.

³⁷ *Id.* at 6.

³⁸ *Id.*

³⁹ *Id.* at Section C, Questions 3-9.

⁴⁰ See Letter from OISI to the Department, Regarding "Section C Supplemental Extension Request," dated February 22, 2017.

⁴¹ See Letter to OISI, "Antidumping Administrative Review of Certain Nails from Oman – Request for an Extension of Time to Submit Response to the Supplemental Section A and C Questionnaire," dated February 22, 2017.

⁴² See Memorandum to the File, "Deadline for Response to February 13, 2017 Supplemental Questionnaire," dated March 3, 2017.

a deadline for OISI to submit its section A and C supplemental questionnaire response by March 8, 2017. OISI failed to submit a response either on or after March 8, 2017.

In accordance with section 776 of the Act, the Department preliminarily determines that the use of facts available is warranted with respect to OISI. When the Department determines that a questionnaire response is deficient, section 782(d) of the Act requires the Department to “inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency{.}” As discussed above, the Department afforded OISI an opportunity to remedy its initial questionnaire response by issuing a supplemental questionnaire, but the company did not provide any of the information requested by the Department in the supplemental questionnaire.

As discussed above, some record information indicates that OISI and ODS are affiliated within the meaning of 19 CFR 351.102(b)(3): management of both companies is intertwined, and OISI is exclusively a toller for ODS, such that that the relationship between the two may impact decisions concerning the production, pricing, or cost of the nails produced by OISI for ODS. Furthermore, some record information indicates that OISI and ODS have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and that there is a significant potential for OISI and ODS to manipulate price or production due to their common ownership, managers, and intertwined operations, within the meaning of 19 CFR 351.401(f). However, without the information sought in the February 10, 2017, supplemental questionnaire, the Department does not have enough information on the record to make either determination. Accordingly, pursuant to section 776(a)(1) of the Act, the Department preliminarily determines that necessary information is not on the record with regard to whether OISI and ODS are affiliated under 19 CFR 351.102(b)(3), or should be collapsed and treated as a single entity under 19 CFR 351.401(f). Additionally, because OISI did not respond to the Department’s February 10, 2017, supplemental questionnaire, the Department preliminarily determines that OISI withheld information requested by the Department, failed to provide the supplemental information by the specified deadline even after the Department extended the deadline, and, thus significantly impeded the proceeding, pursuant to section 776(a)(2) of the Act. The Department has thus preliminarily determined to use facts available in reaching the affiliation and collapsing determinations under section 776(a) of the Act.

Furthermore, the Department preliminarily determines that the application of an adverse inference to its facts available determination is warranted under section 776(b)(1) of the Act. In failing to respond to the Department’s supplemental questionnaire, OISI failed to cooperate by not acting to the best of its ability to comply with a request for information by the Department. Thus, as AFA, the Department has preliminarily determined that OISI and ODS are affiliated entities, pursuant to 19 CFR 351.102(b)(3), and that OISI and ODS are a single entity within the meaning of 19 CFR 351.401(f). Thus, the Department has preliminarily collapsed OISI with ODS, and are assigning the collapsed entities a single rate.

The Department also preliminarily determines that the single rate to be applied to the collapsed OISI entity must be based on facts available. As discussed above, without the information requested in the Department’s February 10, 2017, supplemental questionnaire, the Department is

unable to determine whether OISI accounted for all of its U.S. market sales and expenses relating to the subject merchandise. Thus, the Department is unable to rely on OISI's submitted U.S. market sales. Because the necessary information to calculate a margin for OISI is not on the record, the use of facts available for the preliminary results of review is warranted, pursuant to section 776(a)(1) of the Act. Furthermore, because OISI has withheld requested information, failed to provide such information in the form and manner required, and impeded this review, the use of facts available for the preliminary results is warranted, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act.

Furthermore, despite the request for additional information pursuant to 782(d) of the Act, OISI has failed to cooperate by not acting to the best of its ability to comply with a request for information from the Department, pursuant to section 776(b)(1) of the Act. Moreover, the Department preliminarily determines, pursuant to 782(e) of the Act, that the deficiencies in OISI's reported U.S. sales data are too extensive for the Department to reliably use the information in calculating a margin. Consequently, the Department has preliminarily determined that, in selecting from among the facts otherwise available, an adverse inference is warranted.⁴³ Accordingly, the Department is assigning to the collapsed OISI entity a margin based on AFA.

Corroboration of Information Used for OISI as Adverse Facts Available

Where the Department assigns a margin based on AFA because a respondent failed to cooperate by not acting to the best of its ability to timely comply with a request for information, section 776(b)(2) of the Act authorizes the Department to rely on information derived from the petition, a final determination, a previous administrative review, or other information placed on the record.⁴⁴ Under section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping duty order when applying an adverse inference, including the highest of such margins.⁴⁵ The TPEA also makes clear that when selecting an AFA margin, the Department is not required to estimate what a dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged" commercial reality" of the interested party.⁴⁶ Further, section 776(c) of the Act requires that, to the extent practicable, the Department corroborate secondary information from independent sources that are reasonably at its disposal, except that the Department is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.⁴⁷

We have preliminarily determined to apply, as AFA, a margin of 154.33 percent, which was alleged by the petitioner in the petition filed in this investigation.⁴⁸ In selecting a facts available margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes

⁴³ See section 776(b) of the Act.

⁴⁴ See section 776(b)(2) of the Act; *see also* SAA at 868-870; 19 CFR 351.308(c)(1) & (2).

⁴⁵ See section 776(d)(1)-(2) of the Act; TPEA, section 502(3).

⁴⁶ See section 776(d)(3) of the Act; TPEA section 502(3).

⁴⁷ See section 776(c)(2) of the Act; TPEA section 502(2).

⁴⁸ See *Certain Steel Nails From India, the Republic of Korea, Malaysia, the Sultanate of Oman, Taiwan, the Republic of Turkey, and the Socialist Republic of Vietnam: Initiation of Less-Than-Fair-Value Investigations*, 79 FR 36019, 36023-36024 (June 25, 2014).

of the AFA rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner.⁴⁹ Because the margin alleged in the petition is secondary information under section 776(c)(1) of the Act, in order to determine the probative value of the dumping margin alleged in the petition for assigning an AFA rate, we examined the information on the record. We compared the petition dumping margin of 154.33 percent to the transaction-specific margins calculated for Oman Fasteners, which were not calculated using total AFA. We preliminarily find that the 154.33 percent petition margin falls within the range of the highest transaction-specific margins calculated for Oman Fasteners, which appear to be non-aberrational sales in terms of transaction quantities or other such terms when compared with other sales in Oman Fasteners' database.⁵⁰ Thus, in accordance with section 776(c)(1) of the Act, we have preliminarily corroborated the highest dumping margin contained in the petition, 154.33 percent, as AFA, using transaction-specific margins from the mandatory respondent Oman Fasteners.

VI. DISCUSSION OF THE METHODOLOGY

Normal Value Comparisons

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), in order to determine whether Oman Fasteners' sales of the subject merchandise from Oman to the United States were made at less than normal value (NV), the Department compared the export price (EP) to the NV as described in the "Export Price" and "Normal Value" sections of this memorandum.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(c)(1), the Department calculates weighted-average dumping margins by comparing weighted-average NVs to weighted-average EPs (*i.e.*, the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In less-than-fair-value investigations, the Department examines whether to compare weighted-average NVs with the EPs of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the Department nevertheless finds that the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is, in fact, analogous to the issue in less-than-fair-value investigations.⁵¹

In recent investigations, the Department applied a "differential pricing" analysis for determining whether application of the average-to-transaction method is appropriate in a particular situation

⁴⁹ See SAA at 870. See also, *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from the Republic of Korea*, 77 FR 75988, 75990 (December 26, 2012).

⁵⁰ See Memorandum entitled, "2014-2016 Antidumping Duty Administrative Review of Certain Steel Nails from the Sultanate of Oman, Preliminary Results Analysis for Oman Fasteners LLC" dated concurrently with this memorandum (Oman Fasteners' Preliminary Analysis Memorandum) at 6.

⁵¹ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012) and the accompanying Issues and Decision Memorandum at comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (Ct. Int'l Trade 2014).

pursuant to 19 CFR 351.414(c)(1) and section 777A(d)(1)(B) of the Act.⁵² The Department finds that the differential pricing analysis used in recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating a respondent's weighted-average dumping margin.

The differential pricing analysis used in these preliminary results examines whether there exists a pattern of EPs for comparable merchandise that differ significantly among purchasers, regions, or time periods. The analysis evaluates all export sales by purchaser, region and time period to determine whether a pattern of prices that differ significantly exists. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip code or state code) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the POR based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is defined using the product control number and all characteristics of the U.S. sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP and NV for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen's *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen's *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen's *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen's *d* test, if the calculated Cohen's *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

⁵² See, *e.g.*, *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold; or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

B. Results of the Differential Pricing Analysis

For Oman Fasteners, based on the results of the differential pricing analysis, the Department preliminarily finds that 67.31 percent of the value of U.S. sales pass the Cohen’s *d* test,⁵³ and confirms the existence of a pattern of prices that do not differ significantly among purchasers, regions, or time periods.⁵⁴ Thus, for these preliminary results, the Department is applying the average-to average method to all U.S. sales to calculate the weighted-average dumping margin for Oman Fasteners.

⁵³ See Oman Fasteners’ Preliminary Analysis Memorandum at 2.

⁵⁴ We did conduct a differential pricing analysis for OISI because, as noted below, we applied adverse facts available to the company.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Oman Fasteners in Oman during the POR that fit the description in the “Scope of the Order” section of the accompanying *Federal Register* notice to be foreign like products for purposes of determining NV for the subject merchandise sold in the United States. Pursuant to 19 CFR 351.414(f)(3), we compared Oman Fasteners U.S. sales to foreign like product sales made in the home market, where appropriate.

Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, according to section 771(16)(A) of the Act, we compared U.S. sales to sales of the most similar foreign-like product made in the ordinary course of trade. In making the product comparisons, we matched foreign-like products based on the physical characteristics reported by the respondents to the product sold in the United States. In the order of importance, these physical characteristics are as follows: nail form, product form, steel type, surface finish, diameter, shank length, collation material, head style, shank style, and heat treatment.

Date of Sale

Section 351.401(i) of the Department’s regulations states that, in identifying the date of sale of the merchandise under consideration or foreign like product, the Department normally will use the date of invoice, as recorded in the exporters or producers records kept in the ordinary course of business. However, the regulations permit the Department to use a date other than the date of invoice if it is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁵⁵ The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.⁵⁶

Oman Fasteners reported the sale invoice date as the date of sale for its U.S. sales.⁵⁷ Oman Fasteners reported the sale invoice date because all material terms are set at the time of invoice. Consistent with our practice, the Department has preliminarily determined to use the invoice date as the date of sale.

⁵⁵ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

⁵⁶ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

⁵⁷ See Oman Fasteners’ section C questionnaire response, dated January 3, 2017, at 11

Export Price

Section 772(a) of the Act defines EP as “the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).” In accordance with section 772(a) of the Act, we used the EP methodology for Oman Fasteners because the merchandise under consideration was sold directly to the first unaffiliated purchaser in the United States before the date of importation by the producer or exporter of the merchandise under consideration outside the United States and the use of CEP was not otherwise warranted.⁵⁸

We based EP on packed prices to the first unaffiliated customer for all sales destined for the United States. We based the starting price on the prices to unaffiliated purchasers in, or for exportation to, the United States. We made deductions from the starting price for movement expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act.⁵⁹

Normal Value

A. Comparison Market Viability

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the comparison market, provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the export price. Section 773(a)(1)(C) of the Act contemplates that quantities (or values) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

In order to determine whether there was a sufficient volume of sales in the home market or in the third country to serve as a viable basis for calculating NV, we compared Oman Fasteners’ volume of home-market and third-country sales of the foreign like product to the respective volume of U.S. sales of the subject merchandise in accordance with sections 773(a)(1)(B) and (C) of the Act. Oman Fasteners’ aggregate volumes of sales of foreign like product in the home market or in third-country markets were not greater than five percent of the company’s sales of subject merchandise to the United States. Therefore, Oman Fasteners’ sales in the home market or in the third-country markets are not viable as comparison markets. Consequently, we based NV on constructed value (CV) for Oman Fasteners.

B. Calculation of Normal Value Based on CV

In accordance with section 773(a)(4) of the Act, we used CV as the basis for NV because Oman Fasteners did not have a viable comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, selling, general and administrative (G&A) expenses, interest expenses, U.S. packing expenses, and profit in the calculation of CV. We relied on Oman Fasteners’ submitted materials and fabrication costs,

⁵⁸ *Id.* at 9.

⁵⁹ For further discussion, *see* Oman Fasteners’ Preliminary Analysis Memorandum.

G&A, interest expenses, and U.S. packing costs, except in instances where we determined that the information was not valued correctly, as described below. Based on our examination of the record evidence, Oman Fasteners did not appear to experience significant changes in the cost of manufacturing during the POR. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

Because Oman Fasteners does not have a viable home or third-country market, we are unable to calculate a CV profit ratio using the preferred method under section 773(e)(2)(A) of the Act, *i.e.*, based on the respondent's own home-market or third-country sales made in the ordinary course of trade. When the preferred method is unavailable, we must instead rely on one of the three alternatives outlined in sections 773(e)(2)(B)(i) through (iii) of the Act. Those alternatives are: (i) the use of the actual amounts incurred and realized by the specific exporter or producer in connection with the production and sale of merchandise that is in the same general category of products as the subject merchandise; (ii) the use of the weighted average of the actual amounts incurred and realized by exporters or producers (other than the respondent) that are subject to the investigation or review; or (iii) based on any other reasonable method, except that the amount for profit may not exceed the amount realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise (*i.e.*, the "profit cap").

Because Oman Fasteners manufactures only nails and did not sell any non-subject comparable merchandise in the home market during the POR, we are unable to calculate profit under section 773(e)(2)(B)(i), *i.e.*, based on sales of the same general category of product. Further, as Oman Fasteners is the only respondent in this review for which there will be a calculated margin, we are unable to calculate profit under 773(e)(2)(B)(ii), *i.e.*, based on the preferred method of averaging the profit ratios of the other exporters or producers being examined. Thus, we must calculate profit under section 773(e)(2)(B)(iii), *i.e.*, any other reasonable method.

We have considered ten possible options for CV profit under section 773(e)(2)(B)(iii) based on the information on the record of this investigation: (1) calendar year (CY) 2015 audited financial statements of Al Jazeera Steel Products Co. SAOG (Al Jazeera), a producer of steel bars and pipes in Oman;⁶⁰ (2) CY 2015 audited financial statements of Larsen & Toubro (Oman) LLC (Larsen & Toubro), a construction company executing projects in the oil and gas industries in Oman;⁶¹ (3) CY 2015 audited financial statements of Hi-Tech Fastener Manufacturer (Thailand) Co., Ltd. (Hi-Tech), a producer of screws and rivets in Thailand;⁶² (4) CY 2015 audited financial statements of Bangkok Fastening Co., Ltd. (Bangkok Fastening), a producer of fasteners, nails, wire rods, and various types of wires in Thailand;⁶³ (5) CY 2015 audited financial statements of VTPG-Stroyamat OOD (VTPG), a producer of wire, nails, meshes, welded meshes, and armature

⁶⁰ See Oman Fasteners' Submission of Factual Information for CV Profit and Selling Expenses, dated March 6, 2017 at Exhibit 1.

⁶¹ *Id* at Exhibit 2.

⁶² See Petitioner's Submission of Factual Information for CV Profit and Selling Expenses, dated April 6, 2017 at Exhibit 10.

⁶³ See Oman Fasteners' Submission of Factual Information for CV Profit and Selling Expenses, dated April 6, 2017 at Exhibit 2.

in Bulgaria;⁶⁴ (6) CY 2015 audited financial statements of Special Wires and Nails AD Ruse (Special Wires), a producer of nails, drawing wires, meshes, and wire articles in Bulgaria;⁶⁵ (7) fiscal year (FY) 03/2015 audited financial statements of Astrotech Steels Pvt. Ltd. (Astrotech), a producer of plastic strip, wire coil, paper strip, and bulk nails in India;⁶⁶ (8) FY 03/2016 audited financial statements of Utech Fasten Pvt. Ltd. (Utech), a producer of pneumatic tools, industrial staplers, steel nails, coil nails, and varied other products in India;⁶⁷ (9) FY 03/2016 audited financial statements of H.D. Wires Pvt. Ltd. (HD Wires), a producer of galvanized wire, M.S. wires, weldmesh, hard drawn steel wire, and binding wire in India;⁶⁸ and (10) FY 03/2015 audited financial statements of Geekay Wires Pvt. Ltd. (Geekay), a producer of HTGS earth wire, stay wire, hot dip galvanized wire, and nails/fasteners in India.⁶⁹

We acknowledge that each of these options has its limitations. The difficulty of this issue revolves around the conflict between the statutory preference that CV profit reflects the production and sale of merchandise in the market under consideration and the need for the profit to reasonably reflect the merchandise under investigation. We have analyzed these financial statements pursuant to the analysis established in *Pure Magnesium from Israel* and *CTVs from Malaysia*.⁷⁰ Pursuant to that analysis, we have considered: (1) the similarity between a potential surrogate's business operations and products and the products and operations of the respondent; (2) the extent to which a potential surrogate has sales in the United States and the home market; (3) the contemporaneity of the surrogate data; and (4) the similarity of the customer base between a potential surrogate and the respondent.

We first discuss the similarity between a potential surrogate's business operations and products and the products and operations of the respondent, as well as the similarity of the customer base between a potential surrogate and the respondent.

First, with respect to each of the Omani companies, in the investigation of this proceeding, we found that Larsen & Toubro (a construction company executing projects in the oil and gas industries), and Al Jazeera (a producer of steel bars and pipes) did not produce or sell merchandise identical or comparable to the subject merchandise.⁷¹ After reviewing the financial

⁶⁴ See Petitioner's Submission of Factual Information for CV Profit and Selling Expenses, dated April 6, 2017 at Exhibit 7.

⁶⁵ See Oman Fasteners' Submission of Factual Information for CV Profit and Selling Expenses, dated April 6, 2017 at Exhibit 3.

⁶⁶ See Petitioner's Submission of Factual Information for CV Profit and Selling Expenses, dated April 6, 2017 at Exhibit 2.

⁶⁷ See Oman Fasteners' Submission of Factual Information for CV Profit and Selling Expenses, dated April 6, 2017 at Exhibit 4.

⁶⁸ *Id* at Exhibit 5.

⁶⁹ *Id* at Exhibit 6.

⁷⁰ See *Notice of Final Determination of Sales at Less than Fair Value: Pure Magnesium from Israel*, 66 FR 49349 (Sept. 27, 2001) (*Pure Magnesium from Israel*) and accompanying Issues and Decision Memorandum at Comment 8; *Notice of Final Determination of Sales at Not Less Than Fair Value: Certain Color Television Receivers from Malaysia*, 69 FR 20592 (April 16, 2004) (*CTVs from Malaysia*) and accompanying Issues and Decision Memorandum at Comment 26.

⁷¹ See *Certain Steel Nails From the Sultanate of Oman: Final Determination of Sales at Less Than Fair Value*, 80 FR 28972 (May 20, 2015) and accompanying Issues and Decision Memorandum at Comment 1; see also *Final Results of Redetermination Pursuant to Court Order*, dated May 18, 2017 (issued pursuant to *Mid Continent Steel &*

statements of both companies on the record of the instant review, we preliminarily find that each company's business activities have not changed. Accordingly, we continue to determine that Al Jazeera and Larsen & Toubro do not produce merchandise in the same general category of merchandise as steel nails. We preliminarily find that, although Al Jazeera and Larsen & Toubro represent the profit of Omani companies, their business operations, production processes, and products are dissimilar to Oman Fasteners'. We further preliminarily find that the customer bases of Al Jazeera and Larsen & Toubro are dissimilar to Oman Fasteners' customer base.

Second, with respect to Hi-Tech, the Department has recently found that it is a producer of comparable merchandise to that of steel nails, and relied upon one of Hi-Tech's financial statements to calculate CV profit for Oman Fasteners in the course of the underlying investigation for this proceeding.⁷² However, although Hi-Tech produces comparable merchandise, the record contains financial statements from producers of nails, and thus Hi-Tech's business operations, products, and customer base are not the most similar to those of Oman Fasteners in this proceeding.

Similarly, regarding HD Wires and Geekay, the principle business activity for each company is manufacturing wires which accounts for 99 percent and 99.32 percent, respectively, of each company's total turnover.⁷³ Although the record contains screen prints from HD Wires' website that suggest it offers nails for purchase, nothing in HD Wires' financial statements indicates that it produces nails. Thus, although HD Wires and Geekay may have similar business operations and production processes as Oman Fasteners, we preliminarily find that HD Wires and Geekay do not represent the profit experience of a predominant nail producer like Oman Fasteners to the same extent as the financial statement of Astrotech, a predominant nail producer (discussed below), on this record. Moreover, because HD Wires and Geekay are predominantly wire producers, we preliminarily find that these two companies do not represent the most similar customer base as compared to Oman Fasteners' customer base.

The record contains the financial statements of Bangkok Fastening, VPTG, Special Wires, and Utech; all of which produce nails along with a mixture of several other products. However, the record lacks information regarding Bangkok Fastening's, Special Wires's, and Utech's production of nails as a percentage of their business operations or total production. Accordingly, no evidence on the record indicates whether these companies are predominant producers of nails. Similarly, VPTG's financial statements indicate that approximately 16 percent of its production is nails.⁷⁴ Thus, although these four companies may have similar business operations and production processes as Oman Fasteners, we preliminarily find that these companies do not

Wire, Inc. v. United States, CIT No. 15-214, Slip Op. 17-05), available at <http://enforcement.trade.gov/remands/index.html>.

⁷² See *Certain Steel Nails From the Sultanate of Oman: Final Determination of Sales at Less Than Fair Value*, 80 FR 28972 (May 20, 2015) and accompanying Issues and Decision Memorandum at Comment 1; see also *Certain Steel Nails From the People's Republic of China: Final Results of the Fourth Antidumping Duty Administrative Review*, 79 FR 19316 (April 8, 2014) and accompanying Issues and Decision Memorandum at Comment 2.

⁷³ See Oman Fasteners' Submission of Factual Information for CV Profit and Selling Expenses, dated April 6, 2017 at Exhibits 5 and 6.

⁷⁴ See Petitioner's Submission of Factual Information for CV Profit and Selling Expenses, dated April 6, 2017 at Exhibit 7.

represent the profit experience of an exclusive nail producer like Oman Fasteners to the same extent as the financial statement of Astrotech (discussed below) on this record.

In contrast, after reviewing the financial statements of Astrotech, the Department finds that Astrotech is an integrated producer of steel nails that does not produce or sell other products.⁷⁵ As such we find that Astrotech has the most similar business operations, production processes, and products as compared to Oman Fasteners, which also exclusively produces nails. Moreover, because Astrotech exclusively produces nails, we preliminarily find that its customer base will be the most similar to that of Oman Fasteners.

Regarding the extent to which a potential surrogate has sales in the United States and the home market, Oman Fasteners asserts, based on third party export data from a port close to Astrotech, that approximately 84 percent of the value of Astrotech's revenue for 2016 is from sales of nails to the United States⁷⁶ However, the data supporting Astrotech's percentage of exports to the United States is from CY 2016, whereas the financial statements are FY 2015.⁷⁷ Therefore, the export data referenced by Oman Fasteners do not overlap with the financial information contained in Astrotech's FY 03/2015 financial statements. The Department preliminarily determines that there is no information on the record regarding Astrotech's percentage of exports to the U.S. for FY 2015,⁷⁸ nor do the other financial statements indicate the percentage of each companies' exports to the United States during the period covered by the financial statement.

We have weighed the above considerations to select a reasonable source for CV profit data among the available options before us, and we have preliminarily determined to calculate CV profit using only Astrotech's financial statements, in accordance with section 773(e)(2)(B)(iii) of the Act. However, we have been unable to calculate the amount normally realized by exporters or producers (other than the respondent) in connection with the sale, for consumption in the foreign country, of the merchandise in the same general category as steel nails, because, as discussed above, we have preliminarily determined that the two Omani financial statements on our record are from companies whose business operations, production processes, and products are so dissimilar from those of Oman Fasteners that the Omani companies' products are not within the same general category of merchandise as steel nails. Accordingly, the record does not contain information for calculating a profit cap.

Pursuant to section 776(a) of the Act, where necessary information is not on the record of a proceeding, the Department shall use facts otherwise available. Accordingly, we have considered whether information on the record could be useable as a facts available profit cap. However, our analysis of the financial statements on our record leads us to conclude that, for the reasons discussed above, no financial statements on the record of this proceeding would better fulfill the purpose of the profit cap than the financial statements we have preliminarily

⁷⁵ See Petitioner's Submission of Factual Information for CV Profit and Selling Expenses, dated April 6, 2017 at Exhibit 2.

⁷⁶ See Oman Fasteners' Submission of Rebuttal Factual Information for CV Profit and Selling Expenses, dated April 13, 2017 at Exhibits 1 and 2.

⁷⁷ *Id.*

⁷⁸ See Petitioner's Submission of Factual Information for CV Profit and Selling Expenses, dated April 6, 2017 at Exhibit 2.

determined to use to calculate CV profit under any other reasonable method. Therefore, because there is no other information available on the record, as facts available, we are preliminarily applying option (iii) of section 773(e)(2)(B) of the Act, without quantifying a facts available profit cap.

While Oman Fasteners asserts that the Department is required by the statute to calculate a profit cap, we note that the SAA makes clear that the Department may calculate CV profit without a profit cap, particularly, as is the case here, where there is no viable domestic market in the exporting country for merchandise that is in the same general category of products as the subject merchandise. In numerous previous cases, the Department calculated CV profit under section 773(e)(2)(B)(iii) of the Act without quantifying the profit cap, as facts available.⁷⁹ The legislative history indicates that Congress recognized that there may be instances where, due to a lack of data, the Department would need to use facts available and calculate a CV profit rate pursuant to section (iii) of the Act without quantifying a profit cap.⁸⁰ With respect to this provision of the statute, Congress intended the profit cap to be: (1) based on home market sales information of the same general category of products as the subject merchandise, (2) non-aberrational to the industry under consideration (*i.e.*, “the amount normally realized”), and (3) not based on the data of the respondent for which the Department is calculating CV.⁸¹ Accordingly, we have examined the available data on the record and conclude that there is no information that would meet these standards. As such, we are unable to calculate the profit normally realized by producers other than Oman Fasteners in connection with domestic market sales of merchandise in the same general category as the subject merchandise. Consequently, in accordance with the statute, we have not quantified a profit cap in applying the statutory alternative to determine CV profit for Oman Fasteners.

Finally, With respect to indirect selling expenses, because Oman Fasteners does not have a viable home market or third-country market, the Department does not have comparison market selling expenses to use in its calculations, as directed by section 773(e) of the Act. As an alternative, to calculate selling expenses the Department has used the same financial statements that it used to calculate CV profit (*i.e.*, only Astrotech’s), in accordance with section 773(e)(2)(B)(iii) of the Act.⁸²

C. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP.⁸³ The LOT for NV is based on the starting prices of sales in the home market or, when NV is based on CV,

⁷⁹ See, *e.g.*, *SSPC from Belgium* at Comment 3; *Lined Paper from India*, and accompanying Issues and Decision Memorandum at Comment 3; and *Notice of Final Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From Mexico*, 77 FR 17422 (March 26, 2012) and accompanying Issues and Decision Memorandum at Comment 26.

⁸⁰ See SAA at 841.

⁸¹ See *SSPC from Belgium* at Comment 3.

⁸² See Analysis Memo, at Exhibit I and Petitioner’s Submission of New Factual Information on Constructed Value Profit and Selling Expenses, dated October 31, 2014 at Exhibit 7B.

⁸³ See also section 773(a)(7)(A) of the Act.

those of the sales from which we derived selling, general, and administrative expenses and profit.⁸⁴ For EP, the LOT is based on the starting price, which is usually the price from the exporter to the importer.⁸⁵

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act.

Oman Fasteners

Because Oman Fasteners has no viable comparison market,⁸⁶ and because we based CV selling expenses on Oman Fasteners' financial statement (which records selling expenses for more than just subject merchandise, and which does not break out selling expenses by level of trade or by merchandise), we have no way of conducting a level of trade analysis. Accordingly, we made no LOT adjustment to Oman Fasteners' NV.

D. Cost of Production Analysis

On June 29, 2015, the President of the United States signed into law the Trade Preferences Extension Act of 2015 (TPEA), which made numerous amendments to the AD and countervailing duty law, including amendments to section 773(b)(2) of the Act, regarding the Department's requests for information on sales at less than the cost of production (COP).⁸⁷ This law does not specify dates of application for those amendments.⁸⁸ On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained in section 771(7) of the Act, which relate to determinations of material injury by the U.S. International Trade Commission.⁸⁹ Section 773(b)(2)(A)(ii) of the Act controls all determinations in which the complete initial questionnaire has not been issued as of August 6, 2015. It requires the Department to request CV and COP information from respondent companies in all AD proceedings.⁹⁰

Accordingly, the Department requested this information from Oman Fasteners in this administrative review.⁹¹ We examined Oman Fasteners' cost data and determined that our quarterly cost methodology is not warranted.⁹² We therefore applied our standard methodology of using annual costs based on the reported data.

⁸⁴ See 19 CFR 351.412(c)(1)(iii).

⁸⁵ See 19 CFR 351.412(c)(1)(i).

⁸⁶ See Oman Fasteners December 12, 2016, Section A Questionnaire Response at 2.

⁸⁷ See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015).

⁸⁸ The 2015 amendments may be found at <https://www.congress.gov/bill/114th-congress/house-bill/1295/text/pl>.

⁸⁹ See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

⁹⁰ *Id.*, 80 FR at 46794-95.

⁹¹ See Letter from the Department to Oman Fasteners, Regarding Antidumping Questionnaire, dated November 9, 2016, at 1 and 103; see also Letter from the Department to OISI, Regarding Antidumping Questionnaire, dated November 9, 2016, at 1 and 103.

⁹² We did not examine OISI's cost data because, as noted below, we applied adverse facts available to the company.

Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of costs of materials and fabrication for the foreign like product, plus amounts for general and administrative (G&A) expenses and interest expenses. We relied on the COP data submitted by Oman Fasteners.

E. Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

VII. RECOMMENDATION

We recommend applying the above methodologies for these preliminary results of review.

☒

Agree

☐

Disagree

7/31/2017

X



Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance